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Letter dated 12 February 2016 from the Secretary-General addressed to the President of the Security Council

I have the honour to convey herewith the first report of the Organization for the Prohibition of Chemical Weapons-United Nations Joint Investigative Mechanism (see annex).

I would be grateful if the present letter and its annex could be brought to the attention of the members of the Security Council.

(*Signed*) **BAN** Ki-moon

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Annex

Letter of transmittal

The Leadership Panel of the Organization for the Prohibition of Chemical Weapons-United Nations Joint Investigative Mechanism has the honour to transmit the Mechanism's first report pursuant to Security Council resolution 2235 (2015) (see enclosure).

The report provides an overview of the work of the Mechanism to date, the sources of information available to it and the methodological considerations behind its investigative strategy. It also outlines the steps it will undertake in the next phase, during which case-by-case investigation will be undertaken, with the aim of identifying to the greatest extent feasible individuals, entities, groups or Governments who were perpetrators, organizers, sponsors or otherwise involved in the use of chemicals as weapons, including chlorine or any other toxic chemical, in the Syrian Arab Republic.

(*Signed*) Virginia **Gamba**
Head
Organization for the Prohibition of Chemical Weapons-
United Nations Joint Investigative Mechanism

(*Signed*) Adrian **Neritani**
Leadership Panel

(*Signed*) Eberhard **Schanze**
Leadership Panel

Enclosure

First report of the Organization for the Prohibition of Chemical Weapons-United Nations Joint Investigative Mechanism

I. Introduction

1. The present report is submitted pursuant to paragraph 11 of Security Council resolution 2235 (2015). The reporting period covers the activities of the Organization for the Prohibition of Chemical Weapons (OPCW)-United Nations Joint Investigative Mechanism (hereinafter "the Mechanism") to identify to the greatest extent feasible individuals, entities, groups or Governments who were perpetrators, organizers, sponsors or otherwise involved in the use of chemicals as weapons, including chlorine or any other toxic chemical, in the Syrian Arab Republic from 24 September 2015, when the present mandate of the Mechanism commenced, until 10 February 2016.

II. Background

2. The Security Council, in its resolutions 2118 (2013) and 2209 (2015), condemned in the strongest terms the use of any toxic chemical as a weapon in the Syrian Arab Republic, affirmed that the use of chemical weapons constituted a serious violation of international law and stressed that those responsible for the use of such weapons must be held accountable. On 7 August 2015, the Council unanimously adopted resolution 2235 (2015), by which the Mechanism was established for a period of one year with the possibility of extension, if the Council deems it necessary.

3. The Mechanism was mandated to identify to the greatest extent feasible individuals, entities, groups or Governments who were perpetrators, organizers, sponsors or otherwise involved in the use of chemicals as weapons, including chlorine or any other toxic chemical, in the Syrian Arab Republic where the OPCW fact-finding mission determines or has determined that a specific incident in the Syrian Arab Republic involved or likely involved the use of chemicals as weapons, including chlorine or any other toxic chemical.

4. In accordance with paragraph 5 of resolution 2235 (2015), the United Nations Secretary-General, in coordination with the Director General of OPCW, submitted a letter to the President of the Security Council dated 27 August (S/2015/669) with recommendations, including elements of terms of reference, regarding the establishment and operation of the Mechanism. A second letter to the President of the Security Council, dated 9 September (S/2015/696), was submitted upon a request for further clarification on the terms of reference of the Mechanism. The Security Council authorized these recommendations, as conveyed by the President of the Security Council in his letter to the Secretary-General dated 10 September (S/2015/697).

5. On 15 September, the President of the Security Council informed the Secretary-General (see S/2015/710) that the members of the Security Council took note of the intention expressed in the Secretary-General's letter dated 11 September (S/2015/709) to appoint Virginia Gamba (Argentina) as head of the independent

three-member leadership panel to be set up to lead the Mechanism. On 24 September, the Secretary-General, in coordination with the Director General of OPCW, appointed Adrian Neritani (Albania) and Eberhard Schanze (Germany) as the remaining two members of the Leadership Panel, who also act as deputies to the Head of the Mechanism and are responsible for its political and investigation components, respectively.

Activities of the Mechanism

6. On 1 and 2 October, the Leadership Panel held a planning meeting in New York, with the participation of representatives of the United Nations Secretariat, the Technical Secretariat of OPCW and the secretariats of relevant expert organizations, such as the World Health Organization and the International Criminal Police Organization, to discuss the setting-up and operationalization of the Mechanism. The participants identified key tasks and roles, including the support required by the Mechanism, and the personnel profiles and skill sets required in the Mechanism. On the basis of the proceedings of the meeting, the Panel decided on the priorities and the immediate next steps regarding the methods of work.

7. The Leadership Panel proceeded to recruit its core staff, grouped into three components: a political office based in New York providing political analysis, legal advice, media relations and information management; an investigative office based in The Hague providing chemical and medical analysis, forensics, military ordnance analysis and other relevant information analysis; and a planning and operations support office based in New York providing support to the Panel and the political and investigative components.

8. The Leadership Panel took great care to ensure that impartial and experienced staff with relevant skills and expertise were recruited in accordance with the elements proposed by the Secretary-General in his letters to the President of the Security Council (S/2015/669 and S/2015/697). In addition, the Panel paid due regard to the importance of recruiting staff on as wide a geographical basis as was practicable, in accordance with paragraph 6 of resolution 2235 (2015).

9. Steps were taken to ensure that the Mechanism's requirements regarding the integrity and confidentiality of its work, including the protection of documents and evidence, were met. In this connection, it was necessary to obtain office space that satisfied such requirements, including secure communications and information management, for all the components of the Mechanism. As a result, adequate office space that conformed to those requirements was identified at United Nations Headquarters for the Leadership Panel and the Mechanism's political and support components. In addition, a lease arrangement was concluded with OPCW for the space occupied by the Mechanism's investigative component in The Hague. In this regard, an agreement concerning the status of its investigative office is under discussion with the Government of the Netherlands.

10. The establishment of a "light footprint" in Damascus remains a matter of priority for the Leadership Panel, and discussions are ongoing regarding possible arrangements.

11. The Mechanism's personnel costs and basic start-up activities were funded for the first three months under the commitment authority of the Secretary-General pursuant to the provisions of General Assembly resolution 68/249, on unforeseen

and extraordinary expenses for the biennium 2014-2015. As at 1 January 2016, the Mechanism was funded through the regular budget of the United Nations, as approved by the General Assembly in its resolution 70/248.

12. Given that voluntary contributions were required to support the Mechanism's activities, the Security Council authorized the establishment of a trust fund by the Secretary-General to address the material and technical needs of the Mechanism, including additional expertise and activities as requirements emerge. Generous contributions have been received to date, a sign of the importance given to the Mechanism's mandate.

13. In accordance with paragraph 10 of resolution 2235 (2015), the Secretary-General, in his letter to the President of the Security Council dated 9 November (S/2015/854), informed the Council that the Mechanism would begin its full operations on 13 November.

III. Methodological considerations

14. The Leadership Panel noted that there were no precedents for the investigation into the identification of the perpetrators, organizers, sponsors or those otherwise involved in the use of chemicals as weapons, unlike the Secretary-General's Mechanism for Investigation of Alleged Use of Chemical and Biological Weapons, for which there are guidelines and procedures (see A/44/561). Accordingly, the Panel decided that, before the conclusion of the Mechanism's mandate to identify those involved in the use of chemicals as weapons, operating guidelines and procedures for investigating those involved in the use of chemicals as weapons will be submitted to the Security Council.

15. The Mechanism is not mandated to act and function as a judicial or quasi-judicial body. Moreover, it does not have any authority or jurisdiction, either directly or indirectly, to make a formal or binding judicial determination of criminal liability. Accordingly, the Mechanism will function as a non-judicial investigative mechanism within its mandate, identifying "to the greatest extent feasible" individuals and other actors involved in the use of chemicals as weapons and the roles that they played.

16. The Mechanism's work is bound by the principles of impartiality, objectivity and independence. Its work will be undertaken in a confidential manner. All information and evidence considered by the Mechanism will be subject to assessment through verification and substantiation. An opportunity to review, comment and respond will be given, if appropriate, to those that the Leadership Panel may identify.

17. The Leadership Panel held several workshops, conducted comparative studies and reviewed those methods of work adopted by international investigations and sanctions bodies.

18. Further to those studies and consultations, the Leadership Panel developed methods of work on the conduct of its investigations, including the collection of evidence and other related information, as well as the analysis, verification and corroboration of information, and the establishment of appropriate structures for the protection and management of information, as outlined below.

19. The Mechanism will investigate and attempt to identify each category of perpetrator, sponsor, organizer or those otherwise involved in the use of chemicals as weapons. It will also seek to determine whether it was incumbent on those in leadership positions to take necessary and reasonable measures to prevent the use of chemicals as weapons.

20. The Leadership Panel decided that, in reporting its findings to the Security Council, a sufficient degree of supporting evidence was required, i.e., there is evidence of a credible and reliable nature to determine that a party was involved in the use of chemicals as weapons. In indicating the amount of supporting evidence, the Panel will be guided by the following standards:

(a) Overwhelming evidence (highly convincing evidence to support a finding);

(b) Substantial evidence (very solid evidence to support a finding); or

(c) Sufficient evidence (there is evidence of a credible and reliable nature for the Mechanism to make a finding that a party was involved in the use of chemicals as weapons).

21. The report(s) will contain a narrative of the incidents and a summary of the information and evidence collected. In addition, it will detail the findings, including the amount of evidence that was assessed and, whenever possible, the strength of its findings, and a conclusion.

22. Where the Leadership Panel determines that there is insufficient evidence in relation to an incident investigated by the Mechanism, it will report accordingly to the Security Council.

23. The Mechanism developed and implemented, as a first step, a records management system within a robust information security regime applicable to all information obtained or generated by the Mechanism in the conduct of its work. The regime takes into account the confidentiality and security requirements deemed necessary for the storage and use of information and evidence provided to the Mechanism, including those provided by OPCW. Access to information by members of the Mechanism is on a need-to-know basis, and access rights are determined by the Head of the Mechanism. All personnel of the Mechanism have signed an undertaking agreeing not to disclose any confidential information obtained through the course of their work for the Mechanism and have been trained on information security.

24. The Leadership Panel decided that the implementation of the Mechanism would be undertaken in the following phases:

(a) Phase I: information collection and planning for case development, which commenced when the Mechanism began its full operations on 13 November. This phase consists of reviewing and analysing the fact-finding mission data, mapping the incidents, and elaborating an investigation plan and methodology, including evidentiary standards and relevant procedures. Furthermore, this phase includes the collection of relevant non-fact-finding mission information and the provision of appropriate training to its personnel, including for field deployments. This phase is scheduled to conclude at the end of February 2016;

(b) Phase II: case investigation, which will consist of in-depth analysis of the cases identified during phase I. This phase will commence in March 2016 and will

include performing detailed analysis of the information obtained, conducting field visits and witness interviews as necessary, and obtaining case-relevant information from Member States and others. This stage will continue until sufficient information and evidence are gathered to allow the Mechanism to report its findings to the Security Council. In addition, the Leadership Panel will submit to the Council the operational guidelines and procedures for the Mechanism to identify those involved in the use of chemicals as weapons.

IV. Activities during Phase I

Sources of information

25. In accordance with the relevant provisions of resolution 2235 (2015), the Leadership Panel decided to base the Mechanism's work on the following sources of information:

(a) Information and evidence obtained or prepared by the fact-finding mission, including but not limited to medical records, interview tapes and transcripts, and documentary material;

(b) Additional information and evidence that was not obtained or prepared by the fact-finding mission but is deemed to be related to the mandate of the Mechanism (non-fact-finding mission sources), including information received from, inter alia, the following:

(i) The Syrian Arab Republic and all parties in the Syrian Arab Republic;

(ii) Other States Members of the United Nations;

(iii) Individual groups or entities with relevant information; and

(iv) Open sources.

26. The Mechanism considers the starting point of the investigation to stem from the fact-finding mission information. Accordingly, priority has been given to reviewing information obtained from the fact-finding mission. In addition, the Leadership Panel has sought and received information from the Syrian Arab Republic and other States, which have agreed to cooperate and provide information in accordance with resolution 2235 (2015). It hopes to receive information from various other sources, including parties in the Syrian Arab Republic. It is also reviewing information contained in open sources and is seeking, where necessary, the assistance within the United Nations and OPCW to obtain access to the necessary material.

Information and evidence obtained or prepared by the fact-finding mission

27. The United Nations and OPCW concluded on 20 November a supplementary arrangement concerning the implementation of resolution 2235 (2015) pursuant to the Agreement concerning the Relationship between the United Nations and the Organization for the Prohibition of Chemical Weapons, concluded in 2001. The arrangement sets out the modalities of cooperation between the two organizations to allow for the speedy establishment and full functioning of the Mechanism.

28. In addition, a memorandum of understanding was concluded between the Mechanism and OPCW on 26 November 2015, concerning the provision of access,

storage and handling of information, including evidence, obtained by the fact-finding mission and the Mechanism. It outlines the procedures for the safe and confidential exchange and retention of information referenced in paragraphs 9 and 12 of resolution 2235 (2015), including through the application of the rules and regulations of OPCW and the United Nations governing the protection, control and release of classified information.

29. On the basis of these arrangements, the Mechanism's investigation commenced in December with the review and analysis of the information and the evidence obtained from the fact-finding mission. OPCW provided, and continues to provide, the Mechanism with fact-finding mission information and evidence pursuant to the memorandum of understanding concluded on 26 November. Additional information was obtained through discussions with the heads and the team members of the fact-finding mission. The fact-finding mission information was reviewed "as is", without discrimination as to the veracity of its sources or any methodology or method of work adopted by the fact-finding mission.

Non-fact-finding mission information

30. In resolution 2235 (2015), the Security Council called on all other States to fully cooperate with the Mechanism through the provision of any relevant information that may assist the Mechanism in fulfilling its mandate. After consultations with Member States, the Head of the Mechanism addressed two formal requests for information, dated 8 December 2015 and 5 January 2016, to the Syrian Arab Republic as well as to neighbouring and other States. The requests included questions related to, inter alia, principal infrastructure and facilities; demographic data; the disposition of armed forces (the forces of the Syrian Arab Republic, armed opposition groups and terrorist groups) and the possession of military equipment; and flight operations. In response, information was received in writing or through technical briefings from several States, including the Syrian Arab Republic. Furthermore, other States have informed the Mechanism in writing that any relevant information, if found, would be forwarded to the Mechanism.

31. In addition, the Leadership Panel received invitations and visited several Member States in order to receive information relevant to its mandate and to supplement the fact-finding mission information. Information was also received in bilateral meetings and consultations in New York and The Hague.

32. The Leadership Panel will continue such contacts, including visits to countries in the region.

Cooperation with the Syrian Arab Republic and all parties in the Syrian Arab Republic

33. On 11 December, the United Nations and the Syrian Arab Republic concluded an agreement concerning the status of the Mechanism in order to ensure the timely, safe and secure conduct of the mandate of the Mechanism in the Syrian Arab Republic. Thereafter, the Leadership Panel visited Damascus on 17 December for meetings with the Government of the Syrian Arab Republic. During the visit, the Panel met with Faisal Mekdad, Deputy Minister for Foreign Affairs, who conveyed the readiness of the Government to cooperate with the Mechanism.

34. At that meeting, a technical visit was agreed upon to allow the Mechanism to obtain further information from the Government. The technical meeting between Syrian experts and members of the investigative team is scheduled to take place in phase II, after the Mechanism completes its review of the fact-finding mission material and non-fact-finding mission material collected.

35. At the meeting in Damascus, the Government also confirmed the receipt of the first request for information. Subsequently, another request for information was dispatched and responses to both requests were received in writing. The information received is being analysed by the investigation team.

36. The Mechanism intends to request the Government for access to locations, individuals and materials in the Syrian Arab Republic as it deems necessary for its investigations.

37. In addition, the Leadership Panel informally received the National Coalition of Syrian Revolutionary and Opposition Forces in November. They discussed the mandate of the Mechanism, and the Panel reiterated the need for cooperation, including the need to receive relevant information, from all parties in the Syrian Arab Republic. The Mechanism intends to make further contacts with parties in the Syrian Arab Republic in phase II.

Further activities under phase I

38. Immediately after the Mechanism became fully operational, the Leadership Panel held a workshop in The Hague from 16 to 19 November 2015, with the participation of the Mechanism's staff and those identified for recruitment. The workshop formally initiated the Mechanism's investigative work and allowed for discussions on its mandate, priorities and principles, including the investigation plan and the strands of investigation. In addition, it provided an opportunity for the Mechanism to hear from the leaders of the fact-finding mission on their work and findings while arrangements were being put in place for the actual provision of full access to the fact-finding mission information and evidence.

39. On 14 December, having concluded the necessary arrangements with OPCW and the Syrian Arab Republic, the Mechanism met in The Hague to further develop the investigative workplan and to discuss progress made in information collection and analysis.

40. Having conducted a preliminary review and analysis of the fact-finding mission material, the Mechanism held meetings in The Hague and thereafter in New York in January to review and adjust as necessary the Mechanism's investigative methodology and workplan. In addition, the Mechanism continued to develop its operational guidelines and standard operating procedures. Furthermore, the Leadership Panel adopted a case management and decision-making process, including the identification of potential cases for investigation by the Mechanism as outlined below.

Mapping of the incidents investigated by the fact-finding mission

41. A mapping exercise was conducted to identify the specific incidents in which: (a) an investigation had been carried out by the fact-finding mission into the alleged use of chemicals as weapons in the Syrian Arab Republic; and (b) the fact-finding

mission had determined that the incident involved or likely involved the use of chemicals as weapons.

42. A total of 116 alleged incidents of the use of chemicals as weapons in the Syrian Arab Republic are mentioned in the fact-finding mission reports and the annexes thereto published to date (S/2015/138, S/2015/908 and S/2016/85). OPCW investigated 29 of them. The Mechanism has the mandate to investigate those cases in which the fact-finding mission concluded that the incident(s) concerned lent credence to the view that toxic chemicals were used, likely involved the use of one or more chemicals, and confirmed with utmost confidence exposure to a chemical substance. This comprises the following 23 incidents, in chronological order:

1. Kafr Zita, Hama Governorate, 10-11 April 2014
2. Al-Tamanah, Idlib Governorate, 12 April 2014
3. Al-Tamanah, Idlib Governorate, 18 April 2014
4. Kafr Zita, Hama Governorate, 18 April 2014
5. Talmenes, Idlib Governorate, 21 April 2014
6. Al-Tamanah, Idlib Governorate, 29-30 April 2014
7. Al-Tamanah, Idlib Governorate, 22 May 2014
8. Al-Tamanah, Idlib Governorate, 25-26 May 2014
9. Qmenas, Idlib Governorate, 16 March 2015
10. Sarmin, Idlib Governorate, 16 March 2015
11. Binnish, Idlib Governorate, 23 March 2015
12. Sarmin, Idlib Governorate, 23 March 2015
13. Sarmin, Idlib Governorate, 26 March 2015
14. Idlib, Idlib Governorate, 31 March 2015
15. Kurin, Idlib Governorate, mid-April 2015
16. Idlib, Idlib Governorate, 16 April 2015
17. Al-Nerab, Idlib Governorate, 27 April 2015
18. Al-Nerab, Idlib Governorate, 1 May 2015
19. Al-Nerab, Idlib Governorate, 2 May 2015
20. Saraqib, Idlib Governorate, 2 May 2015
21. Sarmin, Idlib Governorate, 16 May 2015
22. Idlib, Idlib Governorate, 20 May 2015
23. Marea, Aleppo Governorate, 21 August 2015

43. In relation to the alleged incident of 15 February 2015 in Darayya, where the fact-finding mission found a "high degree of probability that some of those identified as being involved [in the incident] were at some point exposed to sarin or a sarin-like substance" (see S/2016/85), the Director General of OPCW recommended that the matter be further investigated by the fact-finding mission.

The further investigation is "to determine when or under what circumstances [the exposure of individuals to sarin or a sarin-like substance] might have occurred" (ibid., enclosure I). The Mechanism understands that further investigations by the fact-finding mission are ongoing in relation to this incident. The Leadership Panel will wait for the results of those investigations.

Screening and prioritization

44. After the incidents were sorted out and it was determined which of them fell within the Mechanism's mandate, they were prioritized on the basis of information available to the Mechanism. A fact sheet was developed for the 23 incidents to include relevant information.

45. The incidents were then evaluated on the following four variables of equal weight: (a) severity (number of death and casualties, secondary contaminations, etc.); (b) delivery method and munition; (c) quantity of data; and (d) forensically verified information. An assessment value was applied to all the variables, with a score given to the following: (a) consistency and coherence among the accounts given by various sources on the incident; and (b) ability to independently verify and corroborate the information already available.

46. Out of this process, a number of potential cases for investigation have emerged. As at 5 January 2016, the following incidents had been identified as potential cases (in chronological order):

1. Kafr Zita, Hama Governorate, 11 and 18 April 2014
2. Talmenes, Idlib Governorate, 21 April 2014
3. Qmenas, Idlib Governorate, 16 March 2015
4. Sarmin, Idlib Governorate, 16 March 2015
5. Marea, Aleppo Governorate, 21 August 2015

47. The Mechanism continued to review and analyse the rest of the fact-finding mission information and evidence received from non-fact-finding mission sources in January 2016. Such information was fed into the fact sheets. As a result, further incidents have emerged that would merit potential case status, such as the incident in Binnish, Idlib Governorate, on 23 March 2015. This is an ongoing process, and as more information is received and analysed the list of potential cases may change.

48. The Leadership Panel will finalize the list of cases for investigation in February 2016. As of March 2016, cases identified will be investigated until sufficient information and evidence are gathered to allow the Mechanism to present its findings in subsequent reports to the Security Council.

49. The Leadership Panel notes that further alleged incidents may be investigated by the fact-finding mission. Accordingly, there could be further incidents that may fall within the Mechanism's mandate and be potential cases for investigation.

50. The Leadership Panel also notes that the situation on the ground in the Syrian Arab Republic will affect the Mechanism's investigation, as it will likely have an impact on the sources of, and access to, information and evidence. If on-site investigations are deemed not feasible, the Mechanism would follow developments

in the area(s) concerned and be prepared to take any opportunity that may arise to conduct an on-site investigation should the situation change.

V. Concluding remarks

51. The Leadership Panel strongly believes that all individuals, groups, entities or Governments that have any role in enabling the use of chemicals as weapons, for whatever reason and under any circumstances, must understand that they will be identified and made accountable for these abhorrent acts. As such, the Panel hopes that its investigation will act as a deterrent and contribute to the elimination of the use of toxic chemicals as weapons.

52. The Leadership Panel also believes that the process of identifying those involved in the use of chemicals as weapons is a complex task for which the Mechanism will require the continued support and cooperation of all States and other sources, in particular so that the Mechanism can access and obtain information that will assist in its investigation. In this connection, the Panel wishes to convey its appreciation for the full cooperation received from States and others in support of its work thus far, including the generous financial contribution received.

53. Lastly, the Leadership Panel wishes to express its appreciation for the support received from the United Nations Secretariat, in particular the Office for Disarmament Affairs, and from the Technical Secretariat of OPCW.